



## MONTANA WHOLESALE FOOD

Department of Public Health and Human Services

Food and Consumer Safety Section

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# FOOD SALES AND SERVICE JURISDICTION GUIDE

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The purpose of this document is to provide guidance to local health authorities and other interested parties about what regulatory agency has jurisdictional responsibility for various food sales or service.

**Food Product and Jurisdictional Authority Guideline Table**

	RETAIL	WHOLESALE
<b>DOL</b>	<p><b>Not Applicable</b></p> <ul style="list-style-type: none"> <li>- DOL does not license retail operations</li> <li>- Local sanitarian inspects and licenses retail operations</li> </ul>	<ul style="list-style-type: none"> <li>- Manufacturing of food that contains at least 2 percent <u>cooked</u> or at least 3 percent <u>raw</u> meat or poultry by total product weight</li> <li>- Manufacturing of all USDA-regulated type products shipped or sold within Montana, such as meat, poultry, eggs, milk, beef burritos, chicken burritos, meat pizza</li> <li>- Manufacturing of pasteurized products from raw milk ingredient, which have origins from lactating animals. Such products include, but are not limited to: ice cream, cheese, frozen desserts, etc.</li> </ul>
<b>MDA (AG)</b>	<p><b>Not Applicable</b></p> <ul style="list-style-type: none"> <li>- MDA does not license retail operations</li> <li>- Local sanitarian inspects and licenses retail operations</li> </ul>	<ul style="list-style-type: none"> <li>- Growing and distribution of unprocessed produce, including apples, lettuce, spinach, plant sprouts, microgreens (very young plant seedlings), live insects grown as food, etc. Produce does not include wild mushrooms or wild plants.</li> </ul>
<b>DPHHS</b>	<ul style="list-style-type: none"> <li>- Food provided directly to consumers in the usual course of business is a retail activity (check current law for licensing exemptions)</li> <li>- Local sanitarian inspects and licenses retail operations</li> </ul>	<ul style="list-style-type: none"> <li>- Manufacturing of FDA-regulated type products, such as condiment sauces, salsa, tea, spices, bakery goods, beer, wine, cheese burritos, veggie burritos, cheese pizza, veggie pizza, etc.</li> <li>- Manufacturing of all closed-faced sandwiches, regardless of meat or poultry percentage content, such as turkey sandwiches with two pieces of bread, and hamburger on a bun</li> <li>- Manufacturing of food that contains less than 2 percent <u>cooked</u> or less than 3 percent <u>raw</u> meat or poultry by total product weight</li> <li>- Processing of produce or processing produce into other food products (produce that has been cut, sliced, diced, etc., for consumption), including mobile processors</li> <li>- Food storage warehouses not statutorily exempt from licensing (pre-packaged beer, wine and soft drinks), including mobile warehouses</li> </ul>
DOL means the Montana Department of Livestock MDA means the Montana Department of Agriculture DPHHS means the Montana Department of Public Health and Human Services, Food and Consumer Safety Section		

## MONTANA DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

How food provided to the public is licensed depends on the type of food being served or sold, and how it is marketed to the public. If after reading this guide there are questions, please contact the state Food and Consumer Safety Section (FCSS) at the Department of Public Health and Human Services (DPHHS) for answers about jurisdictional authority and activity status:

### **Food Type**

The first step in assisting businesses that want to sell or serve food is to find out what agency has jurisdiction over the proposed activity. This may be done by obtaining answers about what food products will be sold or served.

### **Marketing**

The next step is to obtain marketing information, which involves the following factors:

- To whom the food will be marketed (consumers and/or retailers)
- Whether the internet will be utilized for food sales or service
- Whether the food product will be shipped out of Montana

**If the food type and marketing are under the jurisdiction of DPHHS, online food sales or service should be licensed on a case-by-case basis, as to whether the proposed activity will be wholesale, retail or both.** Local health authorities should document the proposed activity in writing, as part of the pre-licensing process. The written documentation should include proposed food types and planned marketing.

Below are tips for determining marketing status:

### **Retail Activity**

Food provided directly to consumers in the usual course of business is a retail activity.

### **Wholesale Activity**

Food provided to retailers, and not directly to consumers, in the usual course of business is a wholesale activity.

## MONTANA DEPARTMENT OF LIVESTOCK

Online sales of meat, poultry, milk, and egg products are considered a retail activity by DOL, unless specific information is known that the activity is not retail. This means online sales of meat, poultry, milk, and egg products is a legally licensable activity by local authorities, working with DPHHS.

Most of the time, manufactured wholesale meat, poultry, milk, and egg products that are not shipped out of Montana will be licensed through DOL. Specifically, if the wholesale food being processed contains at least 2 percent cooked or at least 3 percent raw meat or poultry by total product weight, DOL has licensing jurisdiction.

### **Meat, Poultry, Eggs**

If the wholesale food being processed or stored is a closed-face sandwich, regardless of its meat or poultry percentage content, the activity is licensed through DPHHS. If the wholesale food being processed contains less than 2 percent cooked or less than 3 percent raw meat or poultry by total product weight, DPHHS has licensing jurisdiction

### **Milk**

Any manufactured, wholesale food products that have bovine cow or goat milk as an ingredient is licensed through DOL. Milk products would include, but not be limited to: butter, cheese, frozen desserts, ice cream, sour cream, yogurt, and similar products.

If meat, poultry, milk, and egg products are shipped out of Montana, see “USDA” sections of this document on the following page.

## MONTANA DEPARTMENT OF AGRICULTURE

Unprocessed produce intended for human consumption, such as cultivated mushrooms, live insects grown as food, apples, cantaloupe, lettuce, microgreens, and many other fruits and vegetables are licensed by MDA. Microgreens are the very young version of other consumable vegetables. Wild mushrooms are not considered produce.

## WEB ADVERTISING

Online food advertising is not the same as food sales or food service, in terms of statutory licensing requirements. However, even though online food advertising is not a legally licensable activity, it is regulated under section 50-31-107 of the Montana Food, Drug, and Cosmetic Act. Online and offline food advertising cannot be false or misleading.

## INTERSTATE COMMERCE

Federal food regulators consider online food sales, service or advertising to be an interstate commerce, retail activity. This status means that federal agencies may have jurisdictional authority, if states cannot or fail to act under certain circumstances, such as disasters and multi-state illness outbreaks.

## FEDERAL STATUS

### FDA

The United States Food and Drug Administration (FDA) regard online food sales to be a retail activity, unless specific information is known that the activity is not retail. Retail food activities for FDA-type products are regulated through DPHHS.

### USDA

The United States Department of Agriculture (USDA) considers online food sales to be a retail activity, unless specific information is known that the activity is not retail. Meat, poultry, milk and egg products shipped out of Montana are subject to either USDA or FDA regulations, depending on the type of product. Retail food activities for USDA-type products are regulated through DPHHS.

## FEDERAL REGISTRATION

### FDA

Facilities that ship products out of state, and sell or distribute FDA-regulated products must register with FDA, unless the majority of their business is retail. Registration is free, quick, and easy. FDA exempts retail food facilities from their registration under 21 CFR 1.226. However, wholesale facilities that sell or distribute FDA-regulated products must register with FDA to be in compliance with the federal Bioterrorism Act.

### USDA

USDA does not require registration of retail food facilities that distribute or sell meat and/or poultry products.

## COTTAGE FOODS

Beginning October 1, 2015, the updated Montana retail food law became effective, which includes regulation changes for cottage food operations and temporary retail food establishments.

Cottage food operations may advertise online, but may not sell or serve products as part of the operation that is not a transaction directly with the consumer. In other words, the cottage food operator may not ship products to a consumer using a common carrier, such as the United States Postal Service, United Parcel Service, Federal Express or other carriers. The physical transfer of the food must be directly between the operator and consumer.

## TEMPORARY RETAIL FOODS

Temporary retail food establishments are retail food vendors that operate for a brief period of time in conjunction with a special event at a fixed location. These establishments are now permitted exclusively through the local health authority in the county where the special event is being held. Contact the local sanitarian for information.

Questions and comments may be directed to: **Department of Public Health and Human Services**  
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